

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

DENNIS B. McGUIRE,

Petitioner, : Case No. 3:12-cv-310

- vs -

Chief Judge Susan J. Dlott  
Magistrate Judge Michael R. Merz

WARDEN, Chillicothe Correctional  
Institution,

Respondent. :

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**ORDER**

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This capital habeas corpus case is before the Court *sua sponte* upon review of the docket.

On November 5, 2012, the Court ordered the Warden to file an answer conforming to the requirements of Rule 5 of the Rules Governing § 2254 Cases not later than December 5, 2012 (Order for Answer, Doc. No. 5, PageID 114). The Warden filed his answer, denominated as a Return of Writ, on that date (Doc. No. 6). The Return raises, inter alia, the defenses that the Petition does not state a claim cognizable in habeas corpus (PageID 125-130), that it is a second or successive petition governed by 28 U.S.C. § 2244(b) (PageID 130-132), that it is barred by the statute of limitations (PageID 132-135), that the claims are procedurally defaulted (PageID 135-141), and that relief on the merits is precluded by precedent (PageID 141-142).

As provided in Habeas Rule 5(e), the Court set a date for Petitioner to file a reply twenty-one days after the Answer/Return was filed (Order for Answer, Doc. No. 115). Adding the three days provided by Fed. R. Civ. P. 6(d) and excluding Saturday December 29 and Sunday

December 30 as provided by Fed. R. Civ. P. 6(a)(1)(C), Petitioner's reply was due to be filed by December 31, 2012. No reply has been filed and the Court therefore deems the pleadings as closed without a reply.

No state court record was filed with the Return, but, in the absence of any reply, the Court concludes Petitioner has no objection, relying instead on the record filed in his other capital habeas corpus case, 3:99-cv-140, despite the request for a record made in the Petition (Doc. No. 2, PageID 75).

Petitioner makes an unspecified request for discovery in the Petition. *Id.* Petitioner shall file any motion for discovery under Habeas Rule 6 that he wishes the Court to consider not later than January 14, 2013. In the absence of such a motion, the Magistrate Judge will deem the case ripe for decision on the merits.

January 4, 2013.

s/ *Michael R. Merz*  
United States Magistrate Judge